

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 33  
5373182

BETWEEN            PARMINDER SINGH  
                                 Applicant  
  
AND                    PRINTHUB LIMITED  
                                 Respondent

Member of Authority:    Trish MacKinnon  
  
Representatives:        Mark Nutsford, Advocate for Applicant  
                                 David Anderson, Counsel for Respondent  
  
Investigation Meeting:    30 October 2012  
  
Submissions received:    13 November and 5 December 2012 from Applicant  
                                 4 December 2012 from Respondent  
  
Determination:            31 January 2013

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     Parminder Singh says he was employed by Printhub Limited in its shop on Dominion Road, Auckland, over a period of six months in 2011. He claims he was paid less than half his agreed wages, and his employer kept promising, but failing, to pay the arrears the following week. Mr Singh seeks wage arrears including holiday pay. He also seeks compensation and asks the Authority to award penalties against Printhub for failing to supply him with an employment agreement.

[2]     Vikram Singh Dhillon who is a Director of Printhub Limited says neither Print Hub, nor he personally, has ever employed Mr Singh. He says Mr Singh applied for a part-time position Printhub advertised in May 2011 and was provided with a draft independent contractor agreement to fill in if he wished to be considered for the

position. Mr Singh was late in getting back to Printhub and the contract position had already been filled by a gentleman whose name was Aditya.

[3] Mr Dhillon claims he allowed Mr Singh to use the shop's computers and equipment because they spoke the same language; Mr Singh was sad; and Mr Dhillon felt sorry for him. He says Mr Singh did not ever work for Printhub or deal with its customers.

### **Issues**

[4] The first issue I have to determine is:

- (i) Did Printhub employ Parminder Singh between June and December 2011?

If Printhub did employ Mr Singh I will also need to determine:

- (ii) Are there wage arrears owing and are other remedies appropriate?
- (iii) Should a penalty be awarded against Printhub for failing to provide Mr Singh with an employment agreement?

### **First Issue – did Printhub employ Mr Singh?**

#### *The Applicant's Evidence*

[5] Mr Singh says he started working for Printhub on 9 June 2011 after answering an advertisement for a Design and Print Graphic Designer employee on an internet job site and having meetings with Mr Dhillon. Mr Singh was offered \$15 per hour but told he would initially receive \$425 per week as that was all the business could afford. Once the business was on its feet he would receive the correct payment plus the arrears. Although the position had been advertised as 20 hours per week, Mr Singh agreed to Mr Dhillon's request for him to work full time hours.

[6] Mr Singh was not paid for his first week's work but then received a cash payment of \$425 every Tuesday starting from 21 June 2011. His hours of work were 9.00 a.m. to 6.00 p.m. Monday to Saturday. Mr Singh says he was not given a written employment agreement nor was he ever given the independent contractor agreement Mr Dhillon claims to have given him when he applied for the position.

[7] Mr Singh says he regularly banked most or all of his pay and he provided his bank statements for the period as confirmation of the regular deposits he made. The statements show a cash deposit of \$425 was made on 21 June 2011 and various cash deposits were made most weeks over the following six months. Some were for \$425 while others ranged from \$200 to \$435. Mr Singh provided evidence of his tax affairs from Inland Revenue, which shed no light on the regular payments into his bank account.

[8] Mr Singh claims he was usually in sole charge of the Dominion Road store. He had keys to the premises and opened up the store each morning. He got to know the customers very well, some of whom were local business people. Two customers, Kevin Montgomerie and Indra Sharma, independently confirmed Mr Singh was the person they had dealt with in arranging design and printing jobs for their respective businesses.

[9] Mr Montgomerie, who does pre-house purchase inspections, said he had dealings with Printhub in early to mid November 2011 when Mr Singh designed and supplied business cards for him. He had met Mr Singh 6 – 8 times during that period, and explained that Mr Singh was usually the only person in the Printhub shop when he visited.

[10] On one occasion Mr Vikram Dhillon was present and introduced himself as the owner. Mr Montgomerie said he had a discussion with Mr Dhillon about how well Mr Singh performed his job, and how much he appreciated Mr Singh's patience. Mr Dhillon had agreed with him about Mr Singh. Mr Montgomerie had no prior knowledge of, or connection to, Mr Singh other than the business card purchase, and the provision of a reference for him some months later at Mr Singh's request.

[11] Under cross-examination Mr Montgomerie confirmed he was absolutely certain Mr Singh was the person he had dealt with despite the change in appearance Mr Singh had undergone since working in Printhub. He had previously been clean shaven and had not worn a turban whereas he was now bearded and turbaned. Mr Montgomerie was unshakeable in his evidence that the Parminder Singh before the Authority was the person he had dealings with in 2011. When shown a colour

photograph of Aditya, Mr Montgomerie confirmed he was not the person he had dealt with at Printhub over his business cards.

[12] Ms Sharma also confirmed she had dealt with Mr Singh over several months when he had designed gift boxes and labels for her new business. Ms Sharma's written witness statement contained no dates for her contact with Printhub, and her oral evidence to the Authority was somewhat confused about the months in which it occurred.

[13] She acknowledged it was possible her memory was awry over the actual months of contact, but was adamant Mr Singh was the person she had dealt with in Printhub. At my request further documents were provided by Ms Sharma after the investigation meeting. These showed email contact occurred between Ms Sharma and "Parminder" at Printhub between 23 September 2011 and 2 December 2011. During that time 3 emails were sent to Ms Sharma from "Vikram" at Printhub, on 7 and 24 November 2011. Email contact between Ms Sharma and Printhub continued through to 15 February 2012, with the Printhub emails signed off by "Jyoti" during February 2012.

[14] Ms Sharma said Mr Singh was in sole charge of the office when she visited Printhub's premises, which she did on a regular basis. On one occasion only she met Mr Dhillon and his family, but her point of contact was Mr Singh. Ms Sharma said she had spoken to Mr Dhillon in the Manakau premises after the business moved from Dominion Road.

[15] Mr Singh submitted signed statements from two other witnesses supporting his claim to have worked for Printhub over a period of several months in 2011. Neither of those witnesses attended the investigation meeting, and their evidence was unable to be tested. I decline to accord any weight to their statements.

[16] Mr Singh provided copies of emails between Printhub and a number of its clients, in support of his claim to have worked for the company. The emails had the name "Parminder" over the Printhub name and logo. He also provided copies of text messages between himself and Mr Dhillon from 7 July 2011 to 14 December 2011.

[17] The subject matter of the texts varied, with one referring to a quotation for a customer; another requesting Mr Singh to do a print job; and another asking Mr Singh to come in to sort out important jobs. Some text exchanges in November 2011 concerned a letter Mr Singh was requesting from Mr Dhillon about his work for Printhub, and about Mr Dhillon's willingness to help him. Mr Singh produced his mobile phone in the Authority with the text messages displayed.

[18] After he had been working for the company for some months, receiving \$425 per week, but being promised the mounting arrears *next week* on a weekly basis, Mr Singh says he became aware Printhub was not making payments to IRD on his behalf. He raised this with Mr Dhillon who told him not to worry and said he would do something about it soon.

[19] Printhub advertised for a Graphic Designer during Mr Singh's employment with the company. Mr Singh says he asked Mr Dhillon about the advertisement and was told he needed to apply and would be appointed. The advertising process was to legalise his employment situation. Mr Dhillon would start paying tax and the situation would be *proper*.

[20] Mr Singh says he applied, submitting a CV which showed his work over recent months with Printhub. Mr Dhillon objected to this and asked him to revise the CV without including the Printhub work. He did so but was not appointed to the position and says that one day Mr Dhillon asked him not to come to work the following day. Mr Singh did go to work that day and found someone else working in the Printhub store and being trained for his job.

[21] Mr Singh says he stopped going to work at Printhub between 16 and 21 November 2011 because of the tax situation and his belief that Mr Dhillon was exploiting him. Mr Dhillon contacted him by phone and text messages to come back to work and he did so for the next few weeks.

[22] On 12 December 2011 Mr Singh emailed Mr Dhillon for assistance with his application for an extension to his visa. He required a letter from his employer confirming the work he had been doing for Printhub and the length of time he had been doing it. Mr Dhillon refused to confirm his employment and asked Mr Singh not

to email him about it again. Mr Singh says he engaged an employment consultant to help him two days later and did not return to work after that.

[23] Mr Singh told me he knew Aditya by sight from college but did not know his name until some months after he (Mr Singh) had stopped working for Printhub. He did not ever see him in the Printhub store in Dominion Road.

*The Respondent's Evidence*

[24] Mr Dhillon says Printhub was a small family-run operation which was registered in March 2011 and opened for business on 4 April 2011, with himself, his father, his wife, and brother operating the shop. They needed another person and advertised for a part-time contractor to work as a Graphic Designer.

[25] Mr Singh responded to the advertisement and met Mr Dhillon who gave him a draft independent contract agreement to consider. The arrangement was that Mr Singh would go through the contract and contact Mr Dhillon so they could finalise an agreement. When Mr Singh did not contact Mr Dhillon he engaged someone else. Mr Dhillon says that person, whose name was Aditya, but who was also known as Parminder, started work for Printhub on 24 June 2011.

[26] When Mr Singh eventually contacted Mr Dhillon again he was disappointed at missing out on the position. He said he was desperate for work and offered to work without pay. Mr Dhillon says he rejected that offer as there was no further work available and *Printhub was obliged to give the work to the independent contractor retained by the company.*

[27] Mr Dhillon says he felt sorry for Mr Singh and told him he would try to help him find employment. He allowed Mr Singh to come to the shop and have free access to the computers and equipment. Mr Dhillon did this to enable Mr Singh to *learn what he could and keep his skills current to improve his prospects of gaining employment.*

[28] Mr Dhillon says Mr Singh did no work for Printhub and was not paid over the months he visited the shop. He acknowledged he had given Mr Singh keys to the

premises but said this was because Mr Singh liked to come to the shop after hours to use the equipment and *play around with the (design) software*.

[29] Mr Singh came into the shop infrequently to begin with but from September or October 2011 he began to come in more regularly. Mr Dhillon says he would then come in about twice a month.

[30] Mr Dhillon's brother, Ravinder Dhillon, is a Systems Engineer and he created the company's email signature and IT set-up. The company had only one email account for its correspondence, and only one PC for graphic design and sending and receiving emails. Mr Ravinder Dhillon, who provided written and oral evidence to the Authority, says he created the auto-signature using his nickname "Parminder" because it was his nickname and he used to work in the shop after hours. All emails sent and received on the PC had that automated email signature attached.

[31] Mr Ravinder Dhillon said he used to look after any designing, printing, signage or finishing jobs at Printhead, and support any system or IT issues. He said Aditya started working at the Printhead shop one month after the shop had started up. He said he had seen Mr Singh in the shop once or twice a month. On those occasions Mr Singh would do photocopying for customers and also use the PC but he would not be there regularly. In his written evidence Mr Ravinder Dhillon said he had a full time position for another organisation, and used to arrive at the Printhead shop around 5.00 p.m. to 5.30 p.m. daily during the week. He would stay until 7.30 p.m. to 8.30 p.m. On Saturdays he would be in the shop all day.

[32] Mr Vikram Dhillon says the business did not do well and he tried to sell it in October 2011 without success so eventually decided to close it down from the third week of December 2011. He says Aditya gave a month's notice on 24 October 2011, which is why the company advertised for a part-time worker in November 2011. When Mr Dhillon told Mr Singh he could apply for the position, Mr Singh asked if he could put on his CV that he had worked for Printhead. Mr Dhillon told him he could not do that and Mr Singh then sent him *the correct CV* in which he noted his work experience as *currently works as a Freelance Graphic Designer*. Mr Dhillon says Aditya later (on 24 November 2011) indicated he was happy to continue working until December 2011, and the company decided not to take on Mr Singh.

[33] On 12 December 2011 Mr Dhillon says he received an email from Mr Singh, followed by a visit to the Printhub shop, requesting a support letter for immigration purposes. Mr Dhillon says he told Mr Singh he could not give a false statement to extend his permit because it was illegal and he would risk being prosecuted. Mr Singh then offered him \$15,000 to provide the false paperwork and threatened Mr Dhillon when he refused to provide an offer of employment. Mr Dhillon says at that point he told Mr Singh to leave the shop and not return.

[34] Surinder Singh, a customer of Printhub, provided a signed statement to the Authority and also appeared in person to give evidence. Mr Surinder Singh owns a computer business in Auckland and had a signage job design, print and installation job done by Printhub around August 2011. Mr Surinder Singh supplied a photocopy extract from his cheque book which showed he had made a payment to Printhub on 17 September 2011 for the job.

[35] Mr Surinder Singh said he went into the shop twice and was helped by either Mr Vikram Dhillon or Mr Ravinder Dhillon and their father. He said there was one other person in the shop who was clean-shaven. In his written statement Mr Surinder Singh identified a photograph of Aditya as the "Parminder" he had dealt with in the shop. In his oral evidence Mr Surinder Singh was not certain about the identity of that person, other than being sure the person was clean shaven.

[36] Mr Dhillon submitted signed statements from three other customers of Printhub, one of whom had also provided a statement for the applicant. As none of the individuals appeared in person their evidence could not be tested. I treat those statements in the same way as those submitted by Mr Singh from witnesses who did not appear in person and I decline to accord any weight to their evidence.

[37] Mr Dhillon also submitted a statutory declaration from Aditya, together with documents including a signed employment agreement, internet and email policy, and copies of invoices and timesheets. Aditya was leaving New Zealand and returning to his country before the Authority investigation meeting, and his evidence was unable to be tested. I will take his statement of evidence into account in determining this

matter but do not accord it the same weight as that of witnesses who appeared in person and whose evidence was able to be tested.

[38] Aditya's statement confirmed Mr Dhillon's evidence about his engagement as an independent contractor from June to December 2011 for a maximum of 20 hours per week. He said he was the only person working in the shop apart from Mr Dhillon and his family members. He remembered Parminder Singh, whom he knew by sight from college days, coming into the shop and also recalled being told by Mr Dhillon that Mr Singh *was not an employee, staff or a contractor and that he is not allowed to work and he is only allowed access to learn for himself.*

[39] Aditya said Mr Singh asked him many personal questions about how much he earned, when he was paid and what his hourly rate was. He would come into the shop once a week when Aditya was there during Aditya's first few weeks with Printhead, then more frequently from August to September 2011.

[40] Mr Singh would constantly ask Aditya if he could deal directly with clients and said he was desperate for a job in graphic design and was willing to pay \$15,000 to someone for a letter offering employment. Aditya said he did allow him to deal directly with a few clients to help him get exposure and confidence.

[41] Aditya submitted print evidence of text messages he had exchanged with Mr Dhillon between June and December 2011. I accord little weight to those messages as Aditya was not present for questioning and I was not able to see the originals displayed on a mobile phone.

### **Finding: First Issue**

[42] I have set out the parties' evidence in some detail as the determination of the first issue requires me to decide credibility issues between them.

[43] Mr Singh has little documentary evidence to support his claim to have worked for Printhead. His bank statements show he made regular deposits which accorded with his evidence of the cash wage payments made to him by Printhead. His IRD statement shows no other reason for the regular cash deposits. However there is

nothing to link those payments to Printhub, other than Mr Singh's evidence, so they cannot be determinative on their own.

[44] Mr Montgomerie and Ms Sharma were both emphatic that Mr Singh was the person in the shop with whom they had contact in their business dealings with Printhub. While Ms Sharma's recollection of the dates her business was transacted was not completely accurate, that did not diminish the strength of her evidence as to his identity. I find the evidence of both Mr Montgomerie and Ms Sharma to be forceful.

[45] I find some of Mr Dhillon's evidence unconvincing. If, as he claimed, the business never did well and he decided to sell it, first listing it on Trade Me on 23 October 2011, it is odd that he would advertise for a *Junior-Inter Level Graphic Designer* on 18 November 2011, referring to the position as *initially part time* but expected to *quickly develop into a full time position*.

[46] It also seems surprising, given his stated desire to help Mr Singh find a job, he did not simply offer Mr Singh the position after Aditya resigned on 24 October 2011, by his account. Mr Dhillon told the Authority Mr Singh was the preferred candidate, so there was no reason for him to advertise the job. Mr Singh had been coming into the shop over several months and had got to know the equipment and the business. If Mr Dhillon was determined to replace Aditya, despite his efforts to sell the business, there was nothing to prevent him from appointing Mr Singh to the position. I find Mr Dhillon's lack of consistency undermines the credibility of his evidence.

[47] Mr Dhillon was asked in cross-examination why he had advertised in March 2011 for an employee, but claimed to have given Mr Singh an independent contractor contract to consider, and later appointed Aditya as a contractor. He replied he had not thought the matter through properly initially, and had decided an independent contracting arrangement was the better option. That may be a reasonable explanation, but is inconsistent with his advertising for an employee again in November 2011. This lack of consistency again undermines the credibility of his evidence.

[48] Mr Dhillon stated in written evidence to the Authority he had closed the Printhub shop and the business on 23 December 2011. Under cross examination from

Mr Singh's advocate he did not deny the business had simply relocated to premises in Manakau. Mr Dhillon remains a Director of Printhub Limited and its sole shareholder according to publically available Companies Office information.

[49] While I am cautious about placing a great deal of weight on the text messages between Mr Dhillon and Mr Singh, I do note some exchanges concerned customer matters. These do not accord with Mr Dhillon's denial that Mr Singh ever did any work for Printhub or dealt with customers.

[50] I do not find credible Mr Ravinder Dhillon's evidence of having created an auto signature "Parminder" because that was his nickname. By his own account Mr Ravinder Dhillon worked at the store after hours and Saturdays only. His brother, Mr Vikram Dhillon, said he worked in the shop as well as his wife, their father and Aditya. It makes no sense that an auto signature would be set up for 5 people to use, with a name that was relevant to only 2 of them.

[51] I found Mr Surinder Singh to be a credible witness but his evidence does not help resolve the question of whether the clean-shaven "Parminder" in the store on the 2 occasions when he visited was Parminder Singh or Aditya, also known as Parminder. Mr Singh's changed appearance since his disputed employment with Printhub, which was acknowledged by the parties, was not helpful to Mr Surinder Singh's identification. When shown a colour photograph of Aditya he was uncertain whether he was the person in the shop. His evidence was unhelpful in resolving the issue of whether Mr Singh was employed by Printhub.

[52] Overall I find Mr Singh and his witnesses to be more credible than Mr Dhillon, Mr Ravinder Dhillon and the absent Aditya. I find Mr Singh was employed by Printhub whose Director, Mr Vikram Dhillon, went to some lengths to avoid his responsibilities to Mr Singh.

### **Second Issue – Remedies**

[53] I accept Mr Singh's evidence of being offered \$15 an hour at the outset of his employment but receiving only \$425 per week, with a promise of the higher pay rate and arrears when the business could afford it.

[54] My estimate of the outstanding wage arrears differs from Mr Singh's as he calculated Saturdays at an overtime rate and did not allow for the days he acknowledged he did not work between 16 and 21 November 2011, before returning at the request of Mr Dhillon. There was no evidence Mr Dhillon had offered a higher rate for the Saturday work and no obligation on him to do so.

[55] If Printhub had paid Mr Singh at the rate of \$15 per hour throughout his employment it would have paid \$20,715 gross plus holiday pay calculated at 8% in the sum of \$1,657.20. Mr Singh's payments from Printhub totalled \$9,775. Printhub owes Mr Singh the sum of \$12,597.20 gross.

[56] Mr Singh seeks interest on the outstanding wages. I am satisfied that he has been deprived of the use of monies owing to him for more than twelve months and it would be just to award him interest on the amount owing from the end of his employment on 9 December 2011 to the date of payment in accordance with clause 11 of Schedule 2 of the Employment Relations Act 2000.

[57] Mr Singh seeks compensation for distress in the sum of \$15,000. He put forward no evidence or submissions in support of this claim and I decline to award compensation.

### **Third Issue – Penalty**

[58] Mr Singh has sought a penalty against Printhub for not providing him with an employment agreement. He provided no submissions on the matter and I decline to award a penalty.

### **Determination**

[59] Printhub is to pay Mr Singh:

- (i) Arrears of wages, including holiday pay, in the sum of \$12,597.20 gross.

- (ii) Interest on \$12,597.20 from 9 December 2011 to the date of payment at 5%, being the prescribed rate of interest under s 87(3) of the Judicature Act 1908, as referred to by clause 11 of Schedule 2 of the Employment Relations Act.

**Costs**

[60] Costs are reserved.

Trish MacKinnon  
Member of the Employment Relations Authority